

SMALL CLAIMS COURT

[REVISED 2006]



**ADMINISTRATIVE OFFICE
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I. [§34.1] SCOPE OF BENCHGUIDE

This benchguide provides a procedural overview of the conduct of hearings in small claims court under the [Small Claims Act](#) (CCP §§116.110–116.950) and [Cal Rules of Ct 1701–1706, and 1725–1727](#). Discussion of consumer law and other areas of substantive law frequently applied in small claims court is beyond the scope of this benchguide. For a detailed discussion of these areas, see [CALIFORNIA JUDGES BENCHBOOK: SMALL CLAIMS COURT AND CONSUMER LAW](#) (Cal CJER 16th ed 2005). In addition, many courts have training programs for pro tem judges in small claims court, as does the Department of Consumer Affairs in Sacramento.

II. PROCEDURAL CHECKLISTS

A. [§34.2] Preliminary Matters

(1) *Review files before beginning calendar.*

- *Arrive 15–30 minutes before the scheduled start of the court session.*
- *Read correspondence and records of prior proceedings.*
- *Review the plaintiff's claim form (CCP §§116.310(a), 116.320) and any cross-claim filed by the defendant (CCP §116.360). These are the only permissible pleadings and must be made on the prescribed Judicial Council forms. See [Cal Rules of Ct 201.1](#).*

- *Note any questions about venue, jurisdiction, service, conflicts or other matters that are apparent from the files.* See §34.16 (venue), 34.10–34.15 (jurisdiction), 34.6 (service).
- *Ask whether the clerk knows of any problems not apparent from the files.* Examples: correspondence not yet in file, difficult litigants, previous cases filed by the party.
- *Consider setting complex cases or those involving numerous witnesses for hearing later in the calendar.*

☛ JUDICIAL TIP: Review of the files and discussions with the clerk should be completed in time to permit the court session to start on time. Punctuality, courtesy, and attentive listening are as important in small claims cases as in other civil cases.

(2) *Set ground rules with courtroom clerk. The following guidelines are useful for new judges and judges pro tem:*

- *Discuss role of bailiff (or court attendant) with clerk and bailiff or court attendant.* In some courts, the bailiff announces the judge's entrance and assists in the presentation and exchange of documents and exhibits.
- *Discuss default procedures with clerk, e.g., completion of non-military service affidavit.* See §34.4.
- *Discuss how settlement discussions will be handled, where they will take place, and whether they will be monitored by the bailiff or court attendant.* See §34.22.
- *Discuss how presentation of documents will be handled.* In some courts, the bailiff marks the exhibits or asks the parties to do so, and hands the exhibits to the judge when the case begins. Other courts ask the parties to submit the documents during presentation of the case.
- *Discuss whether the judge will allow witnesses to draw diagrams and, if so, whether the courtroom has facilities for doing so.*
- *Discuss placing particular cases at the end of the calendar.*

☛ JUDICIAL TIP: Cases that are commonly placed at the end of the calendar are those in which both parties are not present at the first calling of the calendar and those in which the hearing is likely to be relatively time-consuming. Many judges find it useful to start with cases that are likely to move smoothly and fairly quickly as an example for other litigants who are waiting. When moving to the contested matters, some judges first ask if there is any person present who admits they owe the money plaintiff is claiming.

(3) [*Pro tem judges:*] *Notify the litigants that there will be a temporary judge hearing the case who is a qualified member of the State Bar and that the litigants may have the matter heard before a judicial officer.* See [CCP §116.240](#); [Cal Rules of Ct 1727\(a\)](#). The temporary judge should ensure that litigants who arrive late are similarly advised. After this notice, if the litigant does not object, the matter may heard by a temporary judge.

Under [Cal Rules of Ct 1727\(b\)](#), the notice required by Cal Rules of Ct 1727(a) may be given by a conspicuous sign posted in or just outside the courtroom, along with oral notification or notification by video or audiotape on the day of the hearing or by a written stipulation signed by the litigant. No stipulation is needed for use of a commissioner in small claims court. [Govt C §72190](#).

(4) *Make a general introductory statement in simple language advising the parties and witnesses about how small claims hearings are conducted and informing them of ground rules regarding conduct during the hearing, including the offering of written and oral testimony, burden of proof, policy on interruptions, and what to expect concerning decisions.* In some courts, the clerk or bailiff makes the introductory statement regarding the conduct of the hearing. See [§34.63](#) for spoken form.

- ➡ JUDICIAL TIP: Each small claims court must provide a current copy of a publication describing small claims court law and procedures in each courtroom in which small claims actions are heard. The [CALIFORNIA JUDGES BENCHBOOK: SMALL CLAIMS COURT AND CONSUMER LAW](#) (Cal CJER 16th ed 2005) is an example of a publication that satisfies this requirement. [CCP §116.930\(a\)](#).

In addition, each court may formulate and distribute to litigants and the public a manual on small claims court rules and procedures, explaining how to complete the necessary forms, etc. [CCP §116.930\(b\)](#).

B. [[§34.3](#)] Conducting the Hearing

(1) *Call the case.* After the judge or clerk has called the calendar, many judges find it most efficient to first hear cases in which all the parties are present before calling the uncontested cases. If neither party responds when the case is first called, the case may be placed at the end of the calendar and called again. These practices allow for late arrivals, and therefore tend to reduce the number of dismissals, defaults, and subsequent motions to vacate.

- *When defendant does not appear:* Plaintiff is still required to prove his or her case. [CCP §116.520\(b\)](#). See checklist for default procedure in [§34.4](#).

- *When plaintiff does not appear:* If plaintiff fails to appear but defendant does appear, the judge may consider dismissing the action with or without prejudice (CCP §581(b)) or entering judgment for defendant. If defendant has filed a claim, the court may hear defendant's claim and enter judgment for defendant if defendant proves his or her case. See CCP §116.520(b).

(2) *Quickly review file to ensure that the parties who have appeared are the parties named in the claim and that all declarations are contained in the file.* If one person claims to represent another, the judge should check to see if one of the exceptions to the prohibition of representation by another applies and whether the proper declaration has been filed before permitting that person to testify. See CCP §116.540, and discussion in §§34.23–34.24. See also §34.13 for a discussion of the declaration that may be required when the claim exceeds \$2500.

(3) *Inquire about the possibility of settlement without a hearing.*

- *If the parties are willing to discuss settlement, instruct them to confer privately, preferably in the presence of a courtroom attendant, and return to inform the court of the terms of the settlement so the court may make a note of the terms and review them for fairness.*

☛ **JUDICIAL TIP:** Parties who are willing to talk about settlement should not be penalized by having their case moved to the end of the calendar.

- *Clarify with the parties whether their settlement will operate as a dismissal or as a stipulated judgment that would be enforceable in court.*
- *Consider whether to continue the matter for a short time to allow payment to be made and have the case dismissed as specified in the settlement.* See §34.22.

(4) *Address any issues concerning service, jurisdiction, and venue.*
See §§34.6–34.16.

- *If service is defective, ask whether defendant wishes to waive defective service.*
- *If service is defective and defendant is not present, or is present and does not waive proof of proper service, order a postponement of the hearing for at least 15 days.* CCP §116.570(b).
- *If the amount sought by plaintiff exceeds the jurisdictional limit (\$5000), ask whether plaintiff wishes to waive the amount in excess of the jurisdictional limit.* If there is no waiver, then the case is beyond the jurisdiction of the small claims court and should be

dismissed. See discussion of jurisdictional issues in §§34.10–34.15.

- *Inquire into the facts and determine whether venue and court location are proper or improper even if defendant does not appear or appears and does not challenge venue or court location.* CCP §116.370(c). See discussion in §34.16.

(5) *Ask plaintiff to describe the claim.* In cases involving a debt, it is often advisable to first ask defendant if he or she contests the claim. If a party has multiple claims against a defendant, it is advisable to hear each claim of damage separately. When necessary, ask questions to clarify an issue, to bring the party or witness back to the point, or to elicit an essential element of testimony.

- *Make sure that the occurrence that is the basis of the claim is not barred by the statute of limitations.* Cases involving multiple claims may have a stale claim among the timely ones. Dismissal of a stale claim does not prevent the court from hearing the timely claims.
- *If the claimant is required to be licensed or registered as a condition to maintaining the claim, check the license or registration.* Some examples are:

Contractor	Bus & P C §7031
Car Repair Dealer	Bus & P C §§9884, 9884.16
Electronic/Appliance Service Dealers	Bus & P C §§9830, 9852
Structural Pest Control Operators	Bus & P C §§8550, 8554

- *Determine how plaintiff arrived at the amount for which he or she is suing.* For example, when property damage is alleged, determine whether the calculation of the damage should include allowances for depreciation.

(6) *When plaintiff or defendant has exhibits or documents to present to the court, require the presenting party to show the exhibit to the opposing party.* Frequently, the exchange of documents is done before the judicial officer takes the bench. See §34.2(2). If the documents have not been arranged before the hearing, instruct the parties as follows:

- *Ask the opposing party if he or she wishes to see the document or simply instruct the presenting party to show the document or provide copies of the document to the opposing party.*

- *Instruct the parties to label their documents as having been submitted by either plaintiff or defendant. In some courts a “Plaintiff” and “Defendant” stamp is provided for this purpose.*

(7) *Hear the testimony of any supporting witnesses.*

(8) *Hear testimony from defendant and any brief rebuttal. Make sure both sides have a fair but not unduly prolonged opportunity to be heard.*

(9) *Rule from the bench or take the case under submission.*

- ☛ **JUDICIAL TIP:** Many judges take a case under submission only when the case requires further research or the parties appear very hostile to each other.

(10) *In ruling from the bench, announce the decision in clear, non-legalistic terms.* It is also a good practice to make a brief statement of the general legal principles and social policy on which the judgment is based. If the ruling involves payment, the judge should determine the appropriateness of the installment arrangement and order the terms of judgment accordingly. At this time, many judges ask the debtor to give the creditor his or her phone number and address while still under oath. See §34.64 for spoken form.

(11) *Return exhibits and documents to the parties at the conclusion of the hearing if the ruling is announced from the bench.* If the case is taken under submission, exhibits should be kept with the file and returned to the parties by mail when the decision is rendered. If the exhibits are cumbersome, the judge may wish to make copies of them and return them to the parties immediately after the hearing.

(12) *If taking the case under submission, advise the parties that they will receive notice of the court’s judgment by mail.* See §34.65 for spoken form.

C. [§34.4] Default Procedure

(1) *If defendant fails to appear, require that plaintiff present evidence to prove the claim.* CCP §116.520(b).

(2) *Ask plaintiff to file an affidavit showing that defendant is not in military service.* Servicemembers Civil Relief Act (50 USC App §§501–596).

(3) *Confirm that service, venue, and date of hearing are proper.* See §§34.6–34.16.

(4) *Determine whether any special conditions precedent are involved.* The most common requirements that operate as preconditions to maintaining an action are (1) declaration re prior small claims actions (see §34.13), (2) registration and licensing requirements (see §34.3(5)), (3) written estimates and customer’s consent, and (4) notice. For discussion of

requirements, see **CALIFORNIA JUDGES BENCHBOOK: SMALL CLAIMS COURT AND CONSUMER LAW** chaps 3, 5 (Cal CJER 16th ed 2005).

(5) *Inspect all documents, such as invoices, bills, notes, and contracts.*

(6) *Check for successive claims on installment notes or contracts requiring periodic payment.*

(7) *Ask plaintiff if defendant has disputed the amount in any way.*

(8) *Ask whether plaintiff has received any payments since the claim was filed and, if so, give defendant full credit for them against the amount plaintiff claimed.*

(9) *Determine if the amount claimed includes interest and check for excessive interest claims.*

(10) *Cancel any promissory notes on which judgment has been entered (including checks that were not honored) or merge them into the judgment.*

(11) *Enter judgment for plaintiff only for the amount supported by proof and never for more than plaintiff claimed in the claim form filed with the court. See §34.40.*

(12) *Add recoverable costs. See §34.45.*

(13) *Enter judgment. See §34.66 for spoken form.*

D. [§34.5] Nonappearance of Plaintiff

(1) *If plaintiff fails to appear, dismiss the action or enter judgment for defendant. CCP §581(b).*

(2) *If defendant has filed a claim and proves his or her case, follow the procedure set forth in steps (3)–(13) in §34.4.*

III. APPLICABLE LAW

A. Initial Review of Cases

1. Filing and Service

a. [§34.6] Filing Requirements; Methods of Service

A plaintiff commences a small claims action by filing a claim, under oath, with the clerk of the small claims court, in person or by mail. CCP §116.320(a). When the claim is filed, the clerk must schedule the case for hearing, and issue an order directing the parties to appear at the hearing with witnesses and documents to prove their claim or defense. The case must be scheduled for hearing no earlier than 20 days but not more than 70 days from the date of the order. CCP §116.330(a).

Service of the claim and order may be made by any of the following methods:

- Mailing by the clerk by any form of mail requiring a return receipt. [CCP §116.340\(a\)\(1\)](#).
- Personal delivery by someone other than the plaintiff. [CCP §116.340\(a\)\(2\)](#).
- Substituted service in accordance with [CCP §415.20](#) without attempting personal service. [CCP §116.340\(a\)\(3\)](#). No due diligence is required with substituted service in a small claims court action. [Cal Rules of Ct 1702](#).
- Mailing by the clerk in accordance with [CCP §116.330\(b\)](#). [CCP §116.340\(a\)\(4\)](#).

Service must be made within California, except as provided in [CCP §116.340\(f\)](#) (nonresident real property owners) and in [CCP §116.340\(g\)](#) (nonresident motorists). [CCP §116.340\(e\)](#). See [§34.8](#).

Proof of service of the claim and order must be filed with the small claims court at least five days before the hearing. [CCP §116.340\(c\)](#).

A cross-claim must be filed and served in the manner for filing and serving a plaintiff's claim under [CCP §§116.330 and 116.340](#). [CCP §116.360\(b\)](#). The defendant must serve the plaintiff with a copy of the cross-claim and order at least five days before the hearing date, unless the defendant was served ten days or less before the hearing date. [CCP §116.360\(c\)](#). In such event, the defendant must serve the plaintiff at least one day before the hearing date. [CCP §116.360\(c\)](#).

b. [§34.7] Time Limitations

Service must be completed at least 15 days before the hearing date if the defendant resides in the county in which the action is filed. [CCP §116.340\(b\)](#). If the defendant does not reside in the county, service must be completed at least 20 days before the hearing date. [CCP §116.340\(b\)](#). Service is considered complete on the date the defendant signs the mail return receipt, on the date of the personal service, or as established by other competent evidence applicable to the method of service. [CCP §116.340\(d\)](#).

If service is not completed within these periods, the court should inquire whether an appearing defendant wishes to proceed or have the matter continued. If the defendant is not present, the judge must grant a continuance of at least 15 days. [CCP §116.570\(b\)](#).

c. [§34.8] Special Rules for Service

Specific requirements are set out for service on certain defendants, listed below. See discussion in [CALIFORNIA JUDGES BENCHBOOK: SMALL CLAIMS COURT AND CONSUMER LAW §3.4](#) (Cal CJER 16th ed 2005).

<i>Type of Defendant</i>	<i>Authority Governing Service</i>
Corporations	CCP §§416.10–416.90
Partnerships	CCP §416.40
Public entities	CCP §416.50
Nonresident motorists	CCP §§413.10(b), 415.40 (direct service within the state), or CCP §116.340(g); Veh C §§17450–17461 (service on Director of Motor Vehicles with notice to defendant)
Nonresident real property owners	CCP §116.340(f)

When a small claims action is filed against a principal and his or her guaranty or surety under a guarantor or surety agreement, a reasonable attempt must be made to complete service on the principal. CCP §116.340(h). If service is not completed on the principal, the action must be transferred to a court of appropriate jurisdiction. CCP §116.340(h).

d. [§34.9] Continuance for Incomplete Service

If the file does not contain a proof of service and the plaintiff asserts that service was made, the judge may grant a continuance. See CCP §116.570(a)(4). If service has not been completed under CCP §116.340(b) and the defendant has not appeared and has not requested a postponement, the judge must continue the hearing for at least 15 days. CCP §116.570(b). If there are multiple defendants and some have not been served, the judge must grant a continuance of at least 15 days unless unserved defendants waive service or the plaintiff dismisses the claims against the unserved defendants. See CCP §116.570(b).

2. [§34.10] Jurisdiction/Parties

A small claims court has jurisdiction in actions for the recovery of money if the amount of the demand does not exceed \$5000, and in such actions may grant equitable relief in the form of rescission, restitution, reformation, and specific performance in place of or in addition to money damages. CCP §116.220(a)–(b). The court may also issue a conditional judgment (see §34.43) and, in all instances, retains jurisdiction until full payment and performance of any judgment or order. CCP §116.220(b).

In addition to the jurisdiction conferred by CCP §116.220, the small claims court has jurisdiction in an action brought by a natural person if the

amount of the demand does not exceed \$7500. This \$7500 jurisdiction ceiling for natural persons, however, does not affect the prohibition on actions against guarantors for over \$4000 (see [CCP §116.220\(c\)](#)) or for the restriction on actions seeking more than two claims for \$2500 in a calendar year (see [§34.13](#); [CCP §116.231\(a\)](#)). [CCP §116.221](#).

➡ JUDICIAL TIPS:

- This additional jurisdiction for natural persons was added effective January 1, 2006. Stats [2005, ch 618, §2](#). In making this change, the Legislature declared that its intent was to raise the jurisdictional limit for natural persons only, subject to other existing restrictions. Other forms of persons, including, but not limited to, corporations, partnerships, unincorporated associations, governmental entities, and any other forms of persons as may now exist or may exist in the future, other than individuals, do not qualify for the jurisdictional increase. Stats [2005, ch 618, §1\(b\)\(1\)](#).
- Although not explicitly stated in the 2005 legislation, the prohibition against assignees filing small claims actions ([CCP §116.420](#); [§34.15](#)) applies to claims at the higher limits by natural persons.

A defendant may file a claim against the plaintiff if the claim is within the jurisdictional limit of the small claims court. This claim need not relate to the same subject or event as the plaintiff's claim. [CCP §116.360\(a\)](#); [Cal Rules of Ct 1703](#). If the defendant's claim against the plaintiff exceeds the \$5000 limit and the claim relates to the transaction or event that is the subject of the plaintiff's claim, the defendant may commence an action against the plaintiff in a court of competent jurisdiction and request the small claims court to transfer the small claims action to that court. [CCP §116.390\(a\)](#). See [§34.21](#). A small claims court defendant is not required to bring a claim in order to preserve it; filing a counterclaim is voluntary, not compulsory. *Universal City Nissan, Inc. v Superior Court* (1998) 65 CA4th 203, 205, 75 CR2d 910.

- ➡ JUDICIAL TIP: [Code of Civil Procedure §116.360\(a\)](#), defining the defendant's jurisdiction, specifically refers to [CCP §116.220](#), which sets forth the \$5000 limit for all plaintiffs. It does not refer to the \$7500 limit for natural persons provided by [CCP §116.221](#), effective January 1, 2006, which leaves open the question as to whether a natural person defendant can file a claim for more than \$5000 up to \$7500 against a plaintiff. The failure to refer to [CCP §116.221](#) appears to be a legislative oversight, and the Legislature probably intended that the increase to \$7500 apply to natural defendants.

When a natural person plaintiff files a claim for \$5000 to \$7500, a nonnatural person defendant is still limited to a claim for \$5000 because the increase in jurisdiction to \$7500 in [CCP §116.221](#) was specifically limited to natural persons.

Notwithstanding the higher jurisdictional ceiling, a small claims court has jurisdiction to enforce an agreement against a guarantor only if the demand does not exceed \$4000 if the defendant guarantor charges a fee for its guarantor or surety services or the defendant guarantor is the Registrar of the Contractors' State License Board. If the guarantor is unpaid, the claim may not exceed \$2500. [CCP §116.220\(c\)](#).

Jurisdictional problems may arise when plaintiffs seek to join claims, split claims, file more than two claims for \$2500 in a calendar year, or file an assigned claim. See [§§34.11–34.15](#) for discussion of these issues.

In any case in which the small claims court lacks jurisdiction due solely to an excess in the amount of the demand, the court may obtain jurisdiction if the plaintiff waives the excess. [CCP §116.220\(d\)](#). If damages exceed the jurisdictional limit and the plaintiff does not waive the excess, a small claims court judge must dismiss the action and the plaintiff may refile it in a court of competent jurisdiction. See [§§34.20–34.21](#).

The small claims court has jurisdiction over an action filed by a plaintiff who is incarcerated in a California Department of Corrections and Rehabilitation or Division of Juvenile Justice (formerly California Youth Authority) facility against that facility or one of its employees if the plaintiff alleges in the complaint that he or she has exhausted all administrative remedies and has complied with the claim filing requirements of [Govt C §§905.2 and 905.4](#). [CCP §116.220\(e\)–\(g\)](#).

Any person who is at least 18 years old, or legally emancipated, and mentally competent may be a party to a small claims action. [CCP §116.410\(a\)](#). A minor or incompetent person may appear by a guardian ad litem appointed by the court in which the action is filed. [CCP §116.410\(b\)](#). Under the [Small Claims Act](#), the term “person” includes individuals, corporations, partnerships, limited liability partnerships and companies, firms, associations, and other entities. [CCP §116.130\(e\)](#).

a. [\[§34.11\]](#) Joinder of Plaintiffs

When plaintiffs join claims under [CCP §378](#) (providing for permissive joinder of plaintiffs), the case is within the jurisdiction of the small claims court as long as each plaintiff's separate claim does not exceed the jurisdictional limit, even if the total amount claimed by all the plaintiffs exceeds the jurisdictional limit. *Colla v U-Drive Autos, Inc.* (1930) 111 CA Supp 784, 787, 294 P 378 (action arising out of vehicle collision brought by five plaintiffs). However, if two or more plaintiffs

have a joint interest in the amount recovered, the total amount claimed by all joint plaintiffs must not exceed the jurisdictional limit. *Frost v Mighetto* (1937) 22 CA2d 612, 614, 71 P2d 932 (individual plaintiffs who were two married couples had claims below the jurisdictional limit; however, total claim of each couple was above the limit because total recovery was community property).

b. [§34.12] Splitting of Claims

A plaintiff cannot split a single cause of action and make it the basis of several suits in order to take advantage of small claims court jurisdiction and procedure. *Allstate Ins. Co. v Mel Raption, Inc.* (2000) 77 CA4th 901, 914, 92 CR2d 151. The judge should advise the clerk to be alert to litigants who appear frequently and may be splitting claims.

- ☛ JUDICIAL TIP: Many judges permit successive actions for late payments on an installment contract on the theory that each overdue payment establishes a separate cause of action, and therefore does not constitute splitting a claim. However, if there is an acceleration clause, the plaintiff is not allowed to split the action for the total amount due.

c. [§34.13] Filing More Than Two Claims Over \$2500

Access to small claims jurisdiction generally is limited for claims over \$2500. No more than two claims exceeding \$2500 may be filed in any small claims court during a calendar year. CCP §116.231(a).

An exception to this requirement is allowed for public entities such as cities, counties, and school districts. CCP §116.231(d). But the small claims court must transfer the case out of the small claims division if the defendant informs the court that he or she is represented by an attorney. CCP §116.231(d).

Any party, other than a local public entity, who demands an amount exceeding \$2500 must file a declaration under penalty of perjury, stating that the party has not filed more than two small claims actions exceeding \$2500 in California within the calendar year. CCP §116.231(b). If a plaintiff attempts to file a third claim exceeding \$2500 within a calendar year in violation of CCP §116.231, the court may suggest that the plaintiff either waive the amount over \$2500 or dismiss the current action and refile it one year after his or her last claim exceeding \$2500 was filed if the statute of limitations permits.

- ☛ JUDICIAL TIP: Judges should be alert to plaintiff's attempting circumvention of CCP §116.231 by changing the name of the

entity or suing on behalf of another branch of a multi-branch business.

d. [§34.14] Consolidation of Claims

If a plaintiff has two or more existing claims, each of which constitutes a separate cause of action, the plaintiff is not required to consolidate those claims in a single trial. CCP §§426.60(b), 427.10. However, if the plaintiff chooses to join the causes against a single defendant, the aggregate of the demands determines jurisdiction. *Hammell v Superior Court* (1932) 217 C 5, 17 P2d 101. The demands are not aggregated when the plaintiff has separate claims against different defendants. *Heavilin v Westchester Fire Ins. Co.* (1936) 12 CA2d 695, 56 P2d 252.

A judge may order that similar claims filed by multiple plaintiffs against a single defendant be consolidated for trial. *City & County of San Francisco v Small Claims Court* (1983) 141 CA3d 470, 190 CR 340.

e. [§34.15] Filing Claim by Assignee

The assignee of a claim cannot file or maintain an action on the assigned claim in small claims court (CCP §116.420(a)), with two exceptions: (1) A trustee in bankruptcy may bring an action on a claim in execution of his or her duties as trustee; and (2) a holder of a security agreement, retail installment contract, or lien contract subject to the Unruh Act (CC §§1801–1812.20) or the Rees-Levering Motor Vehicle Sales and Finance Act (CC §§2981–2984.5) that was purchased for investment, not collection, may bring an action on the contract. CCP §116.420(b). A local governmental entity that is self-insured for workers' compensation may seek subrogation under Lab C §3852 in small claims court. CCP §116.420(c).

3. [§34.16] Venue

Venue and court location requirements for cases filed in small claims court are the same as for other civil actions. CCP §116.370(a). The court may promulgate court location requirements by local rule. CCP §116.370(a). In small claims court, a defendant may challenge venue or court location by writing to the court and mailing a copy of the challenge to each of the other parties to the action. CCP §116.370(b); Cal Rules of Ct 1704. The defendant is not required to appear personally at the hearing on the venue or court location challenge. CCP §116.370(b); Cal Rules of Ct 1704. However, if the defendant is not present and the challenge is denied, the hearing must be continued for at least 15 days, and the parties must be given notice of the new hearing date. Cal Rules of Ct 1704.

In all cases, including those in which the defendant does not challenge venue or court location or appear at the hearing, the judge must inquire into the facts and determine whether venue or court location is proper. [CCP §116.370\(c\)](#). When venue or court location is improper, the court, on its own motion, must dismiss the case without prejudice unless all defendants are present and agree that the action may be heard. [CCP §116.370\(c\)\(1\)](#).

If the court determines that venue and court location are proper, the case may be heard if all parties are present. [CCP §116.370\(c\)\(2\)](#). However, if all parties are not present, and the defendant challenges venue, the court must postpone the hearing for at least 15 days and notify all parties by mail of the court's decision and the new hearing date, time, and place. [CCP §116.370\(c\)\(2\)](#).

- ☛ **JUDICIAL TIP:** The judge must take an active role in determining whether venue and court location are proper under [CCP §116.370\(c\)](#). It is particularly important in cases involving consumer indebtedness because most lay defendants will not know when venue is improper. See also discussion in [CALIFORNIA JUDGES BENCHBOOK: SMALL CLAIMS COURT AND CONSUMER LAW §3.7](#) (Cal CJER 16th ed 2005).

4. [§34.17] Setting the Hearing

When a claim is filed, the clerk must schedule the case for hearing, and issue an order directing the parties to appear at the time set for hearing. The case must be scheduled for hearing no earlier than 20 days but not more than 70 days from the date of the order. [CCP §116.330\(a\)](#).

The Judicial Council standards recommend that for small claims cases, courts resolve 90 percent within 75 days after filing and 100 percent within 95 days after filing. [Standards of Judicial Administration §2.1\(h\)](#).

B. Dismissal Before Trial

1. [§34.18] Request for Dismissal

The court may grant a dismissal without prejudice when one party fails to appear at the hearing and the other party appears and requests a dismissal. [CCP §581\(b\)\(5\)](#).

The court may also grant a plaintiff's request for dismissal with or without prejudice before actual commencement of trial. [CCP §581\(b\)\(1\)](#). If the defendant has filed a claim, the court should inform the plaintiff that dismissal will not bar recovery by the defendant. A dismissal may be granted to any party, with or without prejudice, if all other parties consent in writing. [CCP §581\(b\)\(2\)](#).

When a request for dismissal is made to the superior court as part of a small claims appeal proceeding, the superior court's power of dismissal extends only to the appeal and not to the entire small claims action. *Acuna v Gunderson Chevrolet, Inc.* (1993) 19 CA4th 1467, 1473, 24 CR2d 62.

2. [§34.19] Failure To Comply With Fictitious Business Name Laws

If the plaintiff does business under a fictitious business name and the claim relates to that business, a declaration must be filed with the claim stating that the plaintiff has complied with the fictitious business name laws by executing, filing, and publishing a fictitious business name statement. CCP §116.430(a), (c). See Cal Rules of Ct 1701. The court must dismiss without prejudice a small claims action filed by a plaintiff who has not complied with the applicable fictitious business name laws. CCP §116.430(b).

3. [§34.20] Lack of Jurisdiction

The court must dismiss any case in which it does not have jurisdiction. A small claims court has no jurisdiction to hear cases in which the amount claimed exceeds the jurisdictional limit unless the plaintiff waives the amount in excess of the limit (see §34.10), nor is there jurisdiction if the claim amount exceeds \$2500 and the plaintiff has filed two claims for more than \$2500 in the previous calendar year (see §34.13). In addition, there is no jurisdiction in the following instances:

- Hearing unlawful detainer proceedings. See CCP §116.220.
- Enforcing child support orders. *Marriage of Lackey* (1983) 143 CA3d 698, 702–703, 191 CR 309.
- Enforcing conditions from a marital dissolution proceeding (e.g., a condition in a dissolution agreement to pay the loan of a spouse). See 143 CA3d at 702.
- Hearing workers' compensation claims. *Workmen's Comp. Appeals Bd. v Small Claims Court* (1973) 35 CA3d 643, 647, 111 CR 6.
- Hearing claims for equitable relief in the absence of a claim for money damages. See CCP §116.220(a)–(b).
- Issuing prejudgment attachments. CCP §116.140(b).
- Hearing a claim filed or maintained by an assignee of the claim. CCP §116.420(a).

C. [§34.21] Transfer of Action

If a defendant has a claim against a plaintiff that exceeds the jurisdictional limits of the small claims court (see §§34.10–34.15), and the claim relates to the contract, transaction, or event that is the subject of the plaintiff's claim filed against the defendant in that court, the defendant may commence an action against the plaintiff in a court of competent jurisdiction and request the small claims court to transfer the action to that court. CCP §116.390(a). The request is made by filing a declaration with the small claims court at or before the time set for hearing of the small claims action, stating the facts concerning the defendant's action against the plaintiff and including a copy of the complaint filed by the defendant against the plaintiff in the higher court. CCP §116.390(b).

In ruling on a motion to transfer, a small claims court judge may render judgment on the small claims case before the transfer, not render judgment and transfer the small claims case, or refuse to transfer the small claims case on the ground that the ends of justice would not be served. CCP §116.390(c). If the judge orders a transfer before judgment, both actions must be tried together in the transferee court. CCP §116.390(c). If the judge orders a transfer, the small claims court must transmit all files and papers to the transferee court. CCP §116.390(d).

Although CCP §116.390 grants to a small claims defendant the right to request a transfer, it does not grant a similar privilege to a small claims plaintiff. *Acuna v Gunderson Chevrolet, Inc.* (1993) 19 CA4th 1467, 1472–1473, 24 CR2d 62. When filing a claim in the small claims court, a plaintiff intentionally waives excess damages over the small claims court jurisdictional limit. *Jellinek v Superior Court* (1991) 228 CA3d 652, 656, 279 CR 6. Moreover, a small claims plaintiff is not automatically entitled to a transfer of the action under CCP §396 when the damages will exceed that limit; in determining whether to grant a transfer, a small claims court judge must consider whether the transfer will further the ends of justice and whether the application of the provisions of CCP §396 would interfere with the special purposes of the small claims court. *Jellinek v Superior Court, supra*, 228 CA3d at 657–659 (holding that transfer was inappropriate because statute of limitations on claim had run).

If the damages will exceed the jurisdictional limit, the plaintiff has the right to dismiss the small claims court action (see §34.20) and to refile the action in the superior court, provided the statute of limitations has not run. 228 CA3d at 659.

D. [§34.22] Settlements/ADR/Arbitration

If the parties reach a settlement before trial, the court may dismiss the case with or without prejudice if the plaintiff files a written request with the clerk or makes an oral or written request to the court any time before

commencement of the trial. See [CCP §581\(b\)\(1\)](#). The judge should clarify with the parties whether the settlement will operate as a dismissal or a stipulated judgment.

Local mediation or alternative dispute resolution is also an option in some counties. The court may issue a continuance on its own initiative or at the request of any party to allow the parties to pursue informal or alternative dispute resolution. [CCP §116.610\(b\)](#). The court should maintain a list of the alternative dispute resolution programs to which litigants may be referred.

👉 JUDICIAL TIPS:

- Since settlement is usually preferable to trial, the judge may take an active role in suggesting settlement in cases in which the parties do not appear angry and are willing to speak to each other. In such instances, the judge may ask the parties to confer privately, preferably in the presence of a bailiff or court attendant, to discuss settlement. However, to safeguard the inexperienced or unsophisticated litigant from unfair compromise, it is advisable to require the parties to return to the courtroom and inform the judge of the terms of the settlement for approval.
- When a continuance is granted to allow for settlement, some judges explain to the parties that if they do not return on the date for the continuance, the case will be dismissed. Another approach that some judges use is to say that they will dismiss the case with prejudice that day, and the plaintiff can set it aside by declaration if the defendant does not pay as agreed.

When an attorney files a claim in small claims court against a client for an unpaid fee, the client may stay the proceeding by serving and filing a request for arbitration. [Bus & P C §6201\(b\)](#). The small claims action is stayed automatically without necessity of a court order until the arbitrator's award is issued or the arbitration is terminated. [Bus & P C §6201\(c\)](#).

E. [§34.23] Conducting the Hearing

The small claims court judge should conduct the hearing and disposition of a small claims action informally, bearing in mind that the objective is to dispense justice promptly, fairly, and inexpensively. See [CCP §116.510](#). Small claims courts should operate to ensure that the convenience of parties and witnesses who are individuals prevails, wherever possible, over the convenience of corporations, public entities, or any other parties or witnesses who are not individuals. [CCP §116.120\(d\)](#).

- ☛ **JUDICIAL TIP:** Generally, in small claims cases a judge needs to ask questions more frequently than in other types of litigation; however, the judge's ratio of listening to talking should be high. Questions should be brief and asked with the utmost courtesy, without indicating skepticism or an opinion of any other kind. Questions should never be asked in a tone of superiority or in the manner of a lawyer cross-examining a witness.

Parties cannot be permitted to talk at undue length, but they must have a reasonable opportunity to state their claims or defenses. No matter how clear a case may appear to be, both sides should be allowed to testify in every contested matter. If the parties stray from relevant matters, a question or two will usually guide them back.

With the parties' consent, the court may order the case to be heard by a temporary judge who is a member of the State Bar, and who has been sworn and empowered to act until final determination of the case. CCP §116.240(a).

- ☛ **JUDICIAL TIP:** Before serving as a temporary judge in small claims court, on and after July 1, 2006, and at least every three years thereafter, each temporary judge must take the course of study offered by the courts on ethics and substantive law under rules adopted by the Judicial Council. The course must include, but not be limited to (CCP §116.240(b)):
- State and federal consumer laws;
 - Landlord-tenant law, including any applicable county-specific rent deposit law;
 - The state and federal Fair Debt Collection Practices Acts;
 - The federal Truth in Lending Act;
 - The federal Fair Credit Billing Act;
 - The federal Electronic Fund Transfer Act;
 - Tort law; and
 - Contract law, including defenses to contracts and defenses to debts.

1. [§34.24] Appearance by Persons Who Are Not Parties; Participation by Attorneys

Ordinarily, no attorney or person other than the plaintiff or the defendant may take part in the conduct or defense of a small claims action. CCP §§116.530(a), 116.540(a), (f). However, in certain circumstances, specified individuals who are not parties may represent or assist a party.

See §34.25. If an individual qualifies as an authorized representative, the file must contain the proper declaration. CCP §116.540(j).

➡ JUDICIAL TIP: Whenever a representative appears, check to ensure that the proper declaration has been filed *before the representative testifies*.

An attorney may appear in a small claims action that is brought by or against that attorney, by or against a partnership in which the attorney is a general partner and in which all partners are attorneys, or by or against a professional corporation in which the attorney is an officer or director and in which all other officers and directors are attorneys. CCP §116.530(b).

An attorney may provide advice to a party to a small claims action, either before or after the commencement of the action, testify to facts of which the attorney has personal knowledge, and represent a party in an appeal of a small claims judgment and in connection with enforcement of a small claims judgment. CCP §116.530(c).

a. [§34.25] Authorized Representatives

Corporations. Other than a homeowners' association described below, a corporation may appear only through a regular employee or duly appointed or elected officer or director, the purpose of whose appointment or election was not solely to provide representation in small claims court. CCP §116.540(b). The person appearing on behalf of the corporation must submit a declaration stating (1) that he or she is authorized to act for the corporation, (2) the basis for that authorization, and (3) that he or she was not employed solely to represent the corporation in small claims court. CCP §116.540(j).

Other entities. An entity that is not a corporation or a natural person may appear only through a regular employee, duly elected officer or director, or a partner (in the case of a partnership) who was engaged for purposes other than representing the entity in small claims court. CCP §116.540(c). Presumably, government agencies may appear through an employee under CCP §116.540(c). The representative of the entity must submit a declaration stating (1) that he or she is authorized to appear for the entity, (2) the basis for that authorization, and (3) that he or she is not employed solely to represent the entity in small claims court. CCP §116.540(j).

Sole proprietors. A sole proprietorship may appear by a representative if the claim can be proved or challenged by evidence of an account that constitutes a business record under Evid C §1271 and there is no other issue of fact in the case. CCP §116.540(d)(1). The representative must be a regular employee of the party whose purpose of employment was not solely to provide representation in small claims court, and must be

qualified to testify to the identity and method of preparation of the business record. [CCP §116.540\(d\)\(2\)](#). A person appearing as a representative of a sole proprietorship must submit a declaration stating (1) that he or she is authorized to act for the party, (2) the basis for that authorization, and (3) that he or she was not employed solely to represent the party in small claims court. [CCP §116.540\(j\)](#).

Homeowners' associations. A party that is an association created to manage a common interest development, as defined in CC §1351, may appear and participate in a small claims action through an agent, a management company representative, or bookkeeper who appears on behalf of that association. [CCP §116.540\(i\)](#).

Others. Members of the United States Armed Forces on active duty outside the state ([CCP §116.540\(e\)](#)), prisoners ([CCP §116.540\(f\)](#)), nonresident owners of real property ([CCP §116.540\(g\)](#)), and owners of rental real property ([CCP §116.540\(h\)](#)) are entitled to waive personal appearance and submit written declarations as evidence supporting the party's claim, or to allow another person (other than an attorney) to appear on their behalf.

Property agent. A property agent is permitted to represent an owner of rental real property if the agent is under contract to the owner principally to manage the rental property and not to represent the owner in small claims court, and the claim relates to the rental property. [CCP §116.540\(h\)](#).

Required declaration. In addition to the declarations described above, the declaration submitted by any representative of a party under [CCP §116.540\(e\)](#), (f), (g), (h), or (i) must state that the individual is authorized to act for the party and must provide the basis for that authorization. If the representative is appearing under [CCP §116.540 \(h\) or \(i\)](#), the declaration must also state that the individual is not employed solely to represent the party in small claims court. In addition, the declaration submitted by any representative of a party under [CCP §116.540\(e\), \(f\), or \(g\)](#) must state that the person is serving without compensation and has appeared on behalf of others no more than four times during the calendar year. [CCP §116.540\(j\)](#).

Nonresident motorist. Judges may also allow a representative to appear for a nonresident motorist who was involved in a motor vehicle accident when the expenses that the nonresident would incur in appearing in court would exceed the amount in dispute.

Spouses. A married person who sues or is sued with his or her spouse may participate on behalf of the spouse if (1) the claim is a joint claim, (2) the represented spouse has consented, and (3) the court determines that the interests of justice would be served. [CCP §116.540\(k\)](#).

Minors or incompetents. A minor or incompetent can appear only by a guardian ad litem. [CCP §116.410\(b\)](#). For discussion of appointment of a

guardian ad litem for a minor or incompetent party, see California Court Clerks Association Manual of Small Claims Procedures §21 (1992).

If the court determines that a party is unable to present his or her claim or defense properly, the court has discretion to allow another person to assist that party. [CCP §116.540\(l\)](#).

- ➡ JUDICIAL TIP: It is sometimes advisable to allow a person who is not a party to sit with the party in order to make the party feel more at ease or to assist the party in understanding what is being said.

California Department of Corrections and Rehabilitation (CDCR) or Division of Juvenile Justice (DJJ) (formerly California Youth Authority) employees. The CDCR or the DJJ may appear and participate in a small claims action through a regular employee who is employed or appointed for purposes other than solely to represent that department in small claims court. [CCP §116.541\(a\)](#). See [CCP §116.541\(c\)](#) (employee must file declaration concerning his or her representation of department).

- ➡ JUDICIAL TIP: Nothing in [CCP §116.540](#) operates or should be construed to authorize an attorney to participate in a small claims action except as expressly provided in [CCP §116.530](#). [CCP §116.540\(m\)](#); see [§34.24](#).

b. [§34.26] Use of Interpreters

If a party does not speak or understand the English language sufficiently to understand the proceedings or give testimony without assistance, the court may permit another person (other than an attorney) to assist the party. [CCP §116.550\(a\)](#). See *Gardiana v Small Claims Court* (1976) 59 CA3d 412, 418–419, 130 CR 675 (abuse of discretion not to appoint interpreter if uncontradicted evidence shows that witness does not speak or understand English). Separate interpreters may be needed for each non-English-speaking party. [Standards of Judicial Administration §18\(a\)](#). If the party who does not understand or speak English is indigent, the court may appoint an interpreter at public expense. *Gardiana v Small Claims Court*, *supra*, 59 CA3d at 424.

- ➡ JUDICIAL TIP: The judge should be careful not to allow the interpreter to become a spokesperson for the party who has difficulty with the English language.

Each small claims court must make a reasonable effort to maintain and make available to parties a list of interpreters who are able and willing to aid parties in action either for no fee or for a fee that is reasonable given the nature and complexity of the claims. [CCP §116.550\(b\)](#). If a court

interpreter or other competent interpreter is not available to aid a party in a small claims action at the first hearing of the case, the court must postpone the hearing one time only to allow the party the opportunity to obtain another individual (other than an attorney) to assist the party; any additional continuance is discretionary with the court. [CCP §116.550\(d\)](#).

- ➡ JUDICIAL TIP: The judge should ask intake staff to assess need for interpreters early to ensure that an interpreter can be present at the time of the hearing.

On appointing an interpreter for a deaf or hearing impaired party, see [Evid C §754](#). For a detailed discussion of using interpreters, see [CALIFORNIA JUDGES BENCHBOOK: CIVIL PROCEEDINGS—TRIAL §§8.92–8.106](#) (Cal CJER 1997).

2. [§34.27] Defendant's Failure To Appear

If the defendant fails to appear, the plaintiff is still required to prove his or her case. [CCP §116.520\(b\)](#). See [§34.4](#) for a checklist of default procedure.

3. [§34.28] Dismissal

If the plaintiff fails to appear but the defendant does appear, the judge may dismiss the action with or without prejudice or may enter judgment for the defendant. [CCP §581\(b\)](#).

- ➡ JUDICIAL TIP: Some judges recommend that before giving judgment to the defendant the matter should be taken under submission for one to two weeks, thus giving the plaintiff an opportunity to contact the court.

After the commencement of trial, the court may grant a plaintiff's request for dismissal with prejudice at any time before rendering its decision or it may grant a plaintiff's request for dismissal without prejudice if all the parties consent. [CCP §581\(e\)](#). The court may also order a dismissal without prejudice on a showing of good cause. [CCP §581\(e\)](#).

4. [§34.29] Continuances

Any party may seek a continuance of a hearing date by submitting a written request for postponement for good cause. [CCP §116.570\(a\)](#). The request may be made either by letter or by Judicial Council form, filed at least 10 days before the hearing date, unless the court determines that there is good cause for a later filing. [CCP §116.570\(a\)\(1\)](#). On the date of making the request, the requesting party must also mail or personally deliver a copy of the request to each of the other parties to the action. [CCP §116.570\(a\)\(3\)](#). The court must respond promptly by mail to any person

making a written request for postponement. [CCP §116.570\(a\)\(5\)](#). It must grant the request if it finds that the interests of justice would be served by postponing the hearing. [CCP §116.570\(a\)\(4\)\(A\)](#). On written request of a defendant guarantor, the court must postpone the hearing for at least 30 days. [CCP §116.570\(a\)\(4\)\(B\)](#). The court may take this action without a hearing and has the discretion to grant additional postponements. [CCP §116.570\(a\)\(4\)\(B\)](#). When a continuance is granted, the court must notify the parties by mail of the new hearing date, time, and place. [CCP §116.570\(a\)\(4\)\(A\)](#).

☛ **JUDICIAL TIP:** Many judges suggest that courts should liberally grant requests for short continuances at the time of the hearing to allow missing plaintiffs or defendants to appear, thus reducing the frequency of motions to vacate. See [§34.48](#). However, in deciding whether to grant a continuance the court should consider the age and the history of the case and should generally be skeptical about granting a continuance to a party who has made service difficult or who has been dilatory in other ways.

When one party has a medical malpractice claim against the other party, the court must grant a continuance to allow compliance with the provisions of [CCP §364](#) requiring 90 days' prior notice of the intention to commence an action based on medical negligence.

A judge may always grant a continuance to allow informal or alternative dispute resolution. See [CCP §116.610\(b\)](#). Furthermore, the court may use its inherent power to order postponements of hearings in appropriate circumstances. [CCP §116.570\(c\)](#).

When the court grants a continuance because service was not completed within a sufficient time before the hearing as required by [CCP §116.340](#) (see [§34.7](#)), the clerk must give notice of the continuance by mail to all parties. [CCP §116.570\(b\)](#). The court must postpone the hearing in such a case for at least 15 days. [CCP §116.570\(b\)](#).

☛ **JUDICIAL TIP:** There are some instances in which bifurcating a trial may be preferable to granting a continuance. For example, if an essential item of evidence or an essential witness has not been produced, the judge may hear the available evidence and then later, when the missing evidence or witness is presented, the court can send a summary of that evidence to the nonpresenting party who is then given time to respond in writing to the summary. It is generally inadvisable for pro tem judges to bifurcate a trial. If it appears that a case cannot be fully tried in one hearing, the pro tem judge should continue the whole matter briefly.

5. Evidence

a. [§34.30] Basic Guidelines

All parties have the right to offer evidence by witnesses at the hearing or at another time with the permission of the court. CCP §116.520(a). Small claims hearings generally are conducted without the usual rules of evidence, including hearsay objections. *Sanderson v Niemann* (1941) 17 C2d 563, 110 P2d 1025; *Houghtaling v Superior Court* (1993) 17 CA4th 1128, 1137–1139, 21 CR2d 855 (affidavit of out-of-state witness was properly admitted). In most instances, the judge should admit all of a party’s evidence, including hearsay evidence and evidence offered through witnesses, and thereafter determine its weight and trustworthiness. Unless the evidence is inadmissible because of privilege or Evid C §352, the court should “listen patiently, even if it is mentally classifying the evidence as improbable, incredible, or preposterous.” 17 CA4th at 1137. Some small claims judges adhere to the administrative law rule that a case cannot be proved entirely by hearsay.

☛ JUDICIAL TIP: Most judges ask the clerk to swear the parties and any witnesses at the beginning of the hearing. Some judges then permit the parties and witnesses to give their testimony from the counsel table without taking the witness stand. Other judges ask them to take the stand as a means of emphasizing the importance and seriousness of the proceedings. The plaintiff is usually asked to present evidence first and then may be examined by the judge.

When a party wishes to offer testimony through a witness, the judge should instruct the witness, like a party, to present testimony in narrative form. Questions should be asked only by the judge; it is inadvisable to allow the parties to examine witnesses. The material testimony of an unavailable witness may be taken at a continued hearing or submitted in writing. See CCP §116.520(a). However, many judges discourage the practice of continuing a hearing for this purpose, preferring instead to use the judge’s power under CCP §116.520(c) to independently investigate if the court feels the witness is essential. The judge may also telephone a missing witness from court or from chambers to receive testimony. See CCP §116.520(c) (judge may consult witnesses informally and otherwise investigate case with or without notice to the parties).

☛ JUDICIAL TIP: Some judges handle the missing witness problem by allowing the party to testify as to what the witness would say, provided that this hearsay is not disputed by the direct testimony of the other side.

The pretrial discovery procedures described in [CCP §2019.010](#), *i.e.*, depositions, interrogatories, requests for inspection or admissions, etc., are not permitted in small claims actions. [CCP §116.310\(b\)](#).

b. [§34.31] Business Records

Business records may be used to exempt a sole proprietor from appearing personally in a small claims action. To qualify for this exemption, the claim must be one that can be proved or disputed by evidence of an account that constitutes a business record under [Evid C §1271](#) with certain other requirements. [CCP §116.540\(d\)](#). See discussion at [§34.25](#). For further discussion of business records, see 1 Witkin, *California Evidence, Hearsay* §§226–243 (4th ed 2000); 1 Jefferson, *California Evidence Benchbook* §§4.1–4.4 (3d ed CJA-CEB 1997).

c. [§34.32] Judge’s Investigation

In small claims cases, the judge has the discretion to investigate the facts personally in or out of court, with or without notice to the parties. [CCP §116.520\(c\)](#). A judge may also consult with witnesses informally, with or without notice to the parties. [CCP §116.520\(c\)](#).

👉 JUDICIAL TIPS:

- It is sometimes useful, if no other cases are pending, to recess the hearing for 15 or 20 minutes to do some quick research or to consult an expert by phone rather than continue the matter or take it under submission. This may be particularly valuable when follow-up questions may be necessary. It is a good idea to tell the parties that the court has the power to independently investigate the case because many lay people are not aware that this is permissible procedure and might construe it as inappropriate conduct.
- Many judges suggest developing a roster of “consulting experts” or specialists who can be called on to give an objective opinion if needed, especially in the areas of automobile, appliance, television, and home repair.

There are limits on the right to conduct out-of-court investigation. For example, the investigation should be performed by the judge and should not be delegated to the clerk, bailiff, or law clerk unless the parties stipulate. See *Thompson v Municipal Court* (1958) 162 CA2d 676, 678, 328 P2d 514 (judge may not delegate authority to hear evidence to someone else). Furthermore, the judge’s power to rely on his or her own investigation does not permit the judge to refuse to hear a party’s

evidence. *Yoakum v Small Claims Court* (1975) 53 CA3d 398, 403, 125 CR 882.

- JUDICIAL TIP: If the parties do not present sufficient evidence to enable the judge to render a decision, he or she may continue the hearing to permit additional evidence to be presented. However, when determining whether to continue the hearing, the judge should consider the amount involved. If the case does not merit spending the time for a further hearing, the judge might permit a party to mail a document or witness's statement to the court, while giving the other side an opportunity to respond to it without making an appearance. Judges generally agree that a continuance to present further evidence should be granted very rarely.

d. [§34.33] Experts

Experts, including representatives of an insurer, may not participate in the hearing, although they may assist a party in preparing for the hearing. CCP §116.531. However, experts may testify to facts of which they have personal knowledge and about which they are competent to testify. CCP §116.531.

F. [§34.34] Judgment

The judge must render judgment for damages, equitable relief, or both within the jurisdictional limits of CCP §§116.220 and 116.231. CCP §116.610(a). See §§34.10–34.15. The judge may make such orders as to time of payment or otherwise as the judge considers just and equitable for resolution of the dispute. CCP §116.610(a); Cal Rules of Ct 1705.

- JUDICIAL TIP: Code of Civil Procedure §116.610(a) specifically refers to the jurisdiction limits in CCP §§116.220 and 116.231, which set forth the \$5000 limit for all plaintiffs and the restriction on the number of actions per year demanding more than \$2500. It does not refer to the \$7500 limit for natural persons provided by CCP §116.221, effective January 1, 2006. The failure to refer to CCP §116.221 appears to be an oversight, and it seems clear that the Legislature intended that judgments for natural persons may be within the \$7500 limit.

1. [§34.35] Reaching a Decision

While one of the important goals of small claims court is to “dispense justice,” the judge should not depart from applicable substantive law merely to satisfy a personal sense of “justice.” See *Sanderson v Niemann*

(1941) 17 C2d 563, 575, 110 P2d 1025. This does not, however, require that the court exercise strenuous technical precision regarding procedural rules, evidence, burden of proof, and the like, but rather that the court adhere to principles of law applicable to the facts.

2. [§34.36] Announcing the Decision

Judges in small claims court have the option of ruling from the bench at the conclusion of the hearing or taking the case under submission. Some judges recommend ruling from the bench whenever possible, especially in courts with a high volume of cases. Generally, it is advisable to take a case under submission when review of documents, research, or investigation is required; when a party is hostile or argumentative; when the fashioning of relief requires reflection and precision, as is often the case when equitable relief is granted; or when needed computations cannot easily be made on the bench.

a. [§34.37] Ruling From the Bench

When ruling from the bench, the judge should announce the decision in clear, nonlegalistic language. The judge should state the terms fully and should ensure that these terms are recorded properly.

- ☛ JUDICIAL TIP: It is a good practice to review the clerk's records after the hearing, particularly in cases involving judgments other than a straight money judgment.

Some judges also make a brief statement of the general legal principles on which the judgment is based. In ruling from the bench, as in asking questions, it is essential to avoid sarcasm, humor at the expense of a litigant, or any other appearance of bias.

For a spoken form, see §34.64.

b. [§34.38] Taking Case Under Submission

When taking a case under submission, the judge should advise the parties that they will receive notice of the court's judgment by mail. As soon as possible after the small claims calendar each day, the judge should schedule time to decide all the cases heard that day.

- ☛ JUDICIAL TIP: Whenever practical, the judge should decide cases while recollection is fresh. If the calendar is unusually long, the court should take recesses for this purpose. A tickler system should be developed to keep track of submitted cases when the decision hinges on information to be supplied or under investigation. Pro tem judges should ask the clerk to make photocopies rather than take files or documents with them.

For a spoken form, see §34.65.

c. [§34.39] Verifying Addresses; Legal Names

If the defendant is doing business under a fictitious name and the claim relates to that business, the court must inquire into the defendant's correct legal name as well as the name or names under which the defendant does business. CCP §116.560(a), (c). If the defendant's correct legal name or the name actually used by the defendant is not the name stated on the claim, the court must amend the claim to state the correct legal name of the defendant as well as any names actually used by the defendant. CCP §116.560(a). Additionally, before the hearing or before the parties leave the court, the judge or clerk should verify the addresses of the parties.

The plaintiff may request the court at any time, before or after judgment, to amend the claim or judgment to include both the defendant's correct legal name and the name or names actually used by the defendant. CCP §116.560(b). On a showing of good cause, the court must amend the claim or judgment accordingly. CCP §116.560(b).

3. [§34.40] Terms of Judgment

The judge must give judgment for damages or equitable relief or both within the jurisdictional limits of *small claims court* (see §§34.10–34.15). The court may also make any orders as to time of payment or otherwise as the court deems just and equitable for resolution of the dispute. CCP §116.610(a); Cal Rules of Ct 1705.

If the action is against more than one defendant, the court may render judgment against any one of them, leaving the action to proceed against the other defendants whenever a several judgment is proper. CCP §116.610(f).

Motor vehicle accidents. In an automobile accident case in which the action is for more than \$750 in property damages or is based on bodily injury regardless of the amount, the judgment must include a determination as to whether the judgment resulted from a motor vehicle accident on a California highway caused by the defendant's operation of a motor vehicle or by the operation by another person of a motor vehicle registered in the defendant's name. CCP §116.610(c); Veh C §16251.

Property identification. If the judgment refers to specific personal or real property, the property must be identified with adequate detail to enable efficient enforcement of the judgment. CCP §116.610(e); Cal Rules of Ct 1705.

Payment terms. When the judgment is against the defendant or cross-defendant, the judgment is payable either immediately or at the time and on the terms and conditions set by the judge. CCP §116.620(a). See CCP

§116.610(a). For example, the judge may order payment by installments. See CCP §116.620(a); see §34.41. In determining the terms and conditions of payment, the court may consider any factors that would relate to a claim of exemption under CCP §§703.010–703.140 (statutes governing exemptions to money judgments and foreclosures). CCP §116.620(c). For a discussion of these exemptions, see CALIFORNIA JUDGES BENCHBOOK: CIVIL PROCEEDINGS—AFTER TRIAL §§6.10–6.38 (Cal CJER 1998).

Cross-claims; multiple parties. If the defendant has filed a claim against the plaintiff, or if the judgment is against more than one defendant, the judgment must reflect a separate adjudication of each party's claim. CCP §116.610(d). The judgment, and the statement of decision, if one is rendered, must specify the basis for and the character and amount of the liability of each party. CCP §116.610(d). In the case of multiple judgment debtors, the judgment must state whether the liability is joint or several. CCP §116.610(d).

Action to enforce payment of debt; required statement. If the action is to enforce the payment of a debt, the statement of calculation of liability must separately state (CCP §116.222):

- The original debt;
- Each payment credited to the debt;
- Each fee and charge added to the debt;
- Each payment credited against those fees and charges;
- All other debits or charges to the account; and
- An explanation of the nature of those fees, charges, debits, and all other credits to the debt, by source and amount.

a. [§34.41] Installment Payments; Form

The court may authorize installment payments on a motion by a party for good cause and notice by the clerk to all affected parties. CCP §116.620(b). The determination must be made without regard to the nature of the underlying debt or to whether the moving party appeared before entry of judgment. CCP §116.620(b).

Many judges routinely ask defendants whom they think might have difficulty paying the judgment whether they would prefer an installment judgment. The court retains jurisdiction until full payment is made. CCP §116.220(b).

Many judges recommend that an installment judgment be as precise as possible and specify the following:

- The total amount of the judgment;
- The costs awarded (see §34.45);

- The amount of each installment and possibly the total number of payments;
- When installments are payable (*e.g.*, “the first of each month”);
- When they are to commence (*e.g.*, “commencing on November 1, 2001”); and
- The length of any grace period for paying an installment and the effect of failure to pay (*e.g.*, “if any installment is not paid within ten days of the date it is due, the entire judgment becomes due and payable”).

b. [§34.42] Equitable Relief

In any action to recover money under [CCP §116.220\(a\)](#), the small claims court judge may also grant equitable relief in the form of rescission, restitution, reformation, or specific performance. [CCP §116.220\(b\)](#). The court retains jurisdiction until full payment or performance is made. [CCP §116.220\(b\)](#).

☛ **JUDICIAL TIP:** Judgments including equitable relief should be framed clearly and precisely. Pro tem judges should bear in mind that postjudgment hearings may be necessary and a subsequent judge should have a full and clear picture of the intended result. This is one situation in which it is very useful to write a statement of decision that goes into more detail than the judgment.

c. [§34.43] Conditional Judgments

The small claims court may issue a conditional judgment when appropriate. [CCP §116.220\(b\)](#). Certain types of disputes, such as neighborhood disturbances, can often be effectively addressed by a conditional judgment calling for performance or cessation of acts by a party, conditioned by an award of damages on noncompliance of the order.

☛ **JUDICIAL TIP:** A conditional judgment should be very specific about the conduct to be performed and the consequences that will accrue if not completed. The judgment should also include any necessary mechanism for notifying the court of compliance or noncompliance with the condition and should specify a future date for the parties to return to court for this purpose. Details should be spelled out clearly and sufficiently so that a judge who hears subsequent proceedings can make an informed decision. Many judges believe that conditional judgments should be used sparingly.

d. [§34.44] Notice of Entry of Judgment

When the court renders judgment, the clerk must promptly deliver or mail notice of entry of the judgment to the parties. [CCP §116.610\(h\), \(i\)](#). See [Cal Rules of Ct 201.1](#) (mandatory Judicial Council form). The clerk must execute a certificate of personal delivery or mailing and place it in the file. [CCP §116.610\(h\)](#).

4. [§34.45] Table: Selected Costs Recoverable in Small Claims Court

The prevailing party in a small claims action is entitled to recover the costs of the action. [CCP §116.610\(g\)\(1\)](#). A prevailing plaintiff is entitled to recover the costs of serving the order for the appearance of the defendant. [CCP §116.610\(g\)\(1\)](#). If a party paid the higher fee because it filed more than 12 cases during the prior 12 months (see [CCP §116.230\(c\)](#)), it is not entitled to recover more than the lower fee it would have paid if it had not filed more than 12 actions. [CCP §116.610\(g\)\(2\)](#).

Other costs are recoverable as follows:

<i>Cost Item</i>	<i>Recoverable?</i>	<i>Comments</i>
Service of process	Yes	If a private person served process, the recoverable cost is the lesser of the sum actually incurred or the statutory fee allowed to a public officer, except that the court may, in its discretion and on a party's application, award the sum actually incurred. CCP §1033.5(a)(4) . The statutory fee for service of process is \$30; there is no additional fee for substituted service when it is authorized. Govt C §26721 .
Statutory witness fee	Yes	See Govt C §68093 . The court may disallow any fees under this section to a witness unnecessarily subpoenaed.
Expert witness fee	No	Recovery is normally limited to the statutory witness fee, unless the court appoints the expert under Evid C §731(b) .
Surveys, charts, maps	No	Costs for these aids are not recoverable unless the court orders their preparation. <i>Crabtree v Houghton</i> (1923) 191 C 33, 214 P 846.
Investigation	No	See <i>People v Feraud</i> (1920) 45 CA 765, 188 P 843.
Property description	No	See <i>Murphy v F.D. Cornell Co.</i> (1930) 110 CA 452, 455, 294 P 490.
Costs of enforcing judgment	Yes	CCP §116.820(c) .

5. [§34.46] Interest

A party who is entitled to recover damages on a contract claim that was unliquidated until the judgment was rendered may recover prejudgment interest on these damages at the court's discretion. [CC §3287\(b\)](#). The judge may fix a date for the accrual of interest, which may not be earlier than the date the action was filed. [CC §3287\(b\)](#). Some judges recommend that in exercising discretion under [CC §3287\(b\)](#), the judge should explain his or her reasons either orally or in the statement of decision (e.g., "I am awarding prejudgment interest to the plaintiff who was unfairly deprived of the use of the funds because of the defendant's conduct in delaying the case or in continuing it without a meritorious defense"). For a detailed discussion of interest claims, see [CALIFORNIA](#)

JUDGES BENCHBOOK: SMALL CLAIMS COURT AND CONSUMER LAW §§6.6–6.10 (Cal CJER 16th ed 2005).

6. [§34.47] Stay of Execution

The court may stay execution of the judgment. See [CCP §116.620\(a\)](#). In addition, [CCP §116.810\(a\)–\(b\)](#) provides for an automatic stay pending expiration of the time for an appeal, or if an appeal is taken, until the appeal is determined.

The court may also stay enforcement of the judgment pending hearing and determination of a motion to vacate the judgment made by a defendant who was not properly served and did not appear at the hearing. [CCP §116.740\(b\)](#). See [§34.49](#).

G. Postjudgment Proceedings

1. [§34.48] Motion To Vacate Judgment by Party Who Did Not Appear at Hearing

On a showing of good cause, the court may grant a motion to vacate the judgment filed either by a plaintiff or a defendant who failed to appear at the hearing. [CCP §§116.720\(a\), \(c\), 116.730\(a\), \(c\)](#). See [Cal Rules of Ct 201.1](#) (mandatory Judicial Council form).

A plaintiff who failed to appear at the hearing may file a motion to vacate the judgment with the clerk of the small claims court within 30 days after the clerk has mailed notice of entry of the judgment to the parties. [CCP §116.720\(a\)](#). See [CCP §116.710\(a\)](#). The clerk must schedule a hearing on the motion for a date no earlier than ten days after the clerk has mailed written notice of the date, time, and place of the hearing to the parties. [CCP §116.720\(b\)](#).

A defendant who did not appear at the hearing may file a motion to vacate the default judgment with the clerk of the small claims court within 30 days after the clerk has mailed notice of entry of the judgment to the parties. [CCP §116.730\(a\)](#). The defendant must appear at any hearing on the motion, or must submit written justification for not appearing together with a declaration in support of the motion. [CCP §116.730\(b\)](#).

The provisions of [CCP §§1005\(b\) and 1013\(a\)](#) on the extension of time for taking action when notice is given by mail do not apply in small claims actions. [CCP §116.140\(a\)](#).

a. [§34.49] Defendant's Motion To Vacate Judgment for Improper Service

If the defendant was not properly served as required by [CCP §116.330](#) or [§116.340](#) (see [§§34.6–34.9](#)), and did not appear at the hearing in the small claims court, the defendant may file a motion to vacate the

judgment with the clerk of that court. [CCP §116.740\(a\)](#). The motion must be accompanied by a supporting declaration, and must be filed within 180 days after the defendant discovered (or should have discovered) that judgment was entered against the defendant. [CCP §116.740\(a\)](#). The court may order suspension of enforcement of the judgment pending a determination of the motion to vacate. [CCP §116.740\(b\)](#).

The court may grant the motion on a showing of good cause. [CCP §116.740\(c\)](#). If the plaintiff is not present, the court must hear the motion in the plaintiff's absence. [CCP §116.740\(c\)](#). The provisions of [CCP §116.730\(d\)–\(f\)](#) (see [§34.50](#)) apply to a defendant's motion to vacate a judgment for improper service. [CCP §116.740\(d\)](#).

b. [§34.50] Procedure for Granting or Denying Motion To Vacate

The court must hear the motion to vacate whether or not the opposing party is present. [CCP §§116.720\(c\), 116.730\(c\)](#).

If the court grants the motion, it may hear the original small claims case without recalendaring if all parties are present and agree. [CCP §§116.720\(d\), 116.730\(d\)](#). If the opposing party is not present, the judge or clerk must reset the small claims case and give notice in accordance with [CCP §116.330](#) (see [§34.6](#)). [CCP §§116.720\(d\), 116.730\(d\)](#).

If the court denies the defendant's motion to vacate, the defendant may appeal the denial to the superior court by filing a notice of appeal with the clerk of the small claims court within ten days after that court mails or delivers notice of the court's denial of the motion. [CCP §116.730\(e\)](#). See [§34.56](#). If the superior court determines that the motion should have been granted, it may hear the claims of all parties without rescheduling the matter as long as all parties are present, or it may order the case transferred to the small claims court for a hearing. [CCP §116.730\(f\)](#).

➡ **JUDICIAL TIP:** Most judges usually hear the claims without recalendaring, to save time and resolve the case expeditiously. They transfer the case to the small claims court only if the plaintiff is not prepared to retry the case, *e.g.*, because the plaintiff's witnesses are unavailable.

There are no provisions for appeal from a denial of a motion to vacate the judgment brought by the plaintiff. See [CCP §116.720](#). Review by filing a petition for a writ of mandate is also probably unavailable to the plaintiff. See *Parada v Small Claims Court* (1977) 70 CA3d 766, 769, 139 CR 87 (holding that to issue an extraordinary writ to review a small claims judgment would “emasculate” the prohibition against appeal by the plaintiff).

2. [§34.51] Correction of Judgment

A motion to correct a clerical error in a judgment or to set aside and vacate a judgment on the ground of an incorrect or erroneous legal basis for the decision may be made as follows (CCP §116.725(a)):

- By the court on its own motion at any time; or
- By a party within 30 days after the clerk mails notice of entry of judgment to the parties.

Each party may file only one motion to correct a clerical error or to set aside and vacate the judgment on the ground of an incorrect or erroneous legal basis for the decision. CCP §116.725(b).

At any time after judgment for good cause, on motion by a party and notice by the clerk to all affected parties, the court may amend the name of any party to include both the party's correct legal name and the names actually used by that party. CCP §116.630. Under CCP §473(d), the court may correct clerical errors in its judgment or orders as entered to conform to the judgment or order directed. A court has authority to correct clerical errors at any time. *Pettigrew v Grand Rent-A-Car* (1984) 154 CA3d 204, 209 CR 125. When a clerical error in a judgment is corrected, the order of correction is generally made nunc pro tunc to the time of the original entry of judgment. See *Commonwealth Land Title Co. v Kornbluth* (1985) 175 CA3d 518, 531, 220 CR 774.

Because of the informal nature of small claims procedure, and the adoption of CCP §116.725, a judge may correct even judicial errors in a judgment under certain circumstances within a reasonable time. For example, if a judge learns after judgment has been rendered that he or she has applied an incorrect rule of law or has incorrectly applied the law to the facts (*e.g.*, rendering judgment for an unlicensed contractor), the judge may correct the judgment. When new information suggests a different decision, the judge should give the parties an opportunity to be heard before correcting a judicial error in the judgment.

3. [§34.52] Enforcement of Judgment; Payment of Judgment

The judgment of a small claims court may be enforced in the manner set out in CCP §§680.010–724.290, providing for enforcement of judgments for money (CCP §§695.010–695.221), possession of personal property (CCP §§714.010–714.030), and sale of real and personal property (CCP §716.010). CCP §116.820(a). For a detailed discussion of the statutory procedures for enforcement of judgments, see *CALIFORNIA JUDGES BENCHBOOK: CIVIL PROCEEDINGS—AFTER TRIAL*, chaps 6–8 (Cal CJER 1998).

The judgment debtor has the option of paying the judgment directly to the judgment creditor or paying the judgment into court. CCP

§116.840(a). When full payment is made to the judgment creditor, the judgment creditor must immediately file with the clerk of the court an acknowledgment of satisfaction of the judgment. CCP §116.850(a). A judgment creditor who fails to comply with this requirement within 14 days after receiving a written demand by the judgment debtor for compliance is liable to the judgment debtor for all damages sustained because of the failure to comply, plus \$50. CCP §116.850(b). A judgment debtor who elects to make payment to the court must file a request to do so with the court. CCP §116.860(a). See Cal Rules of Ct 201.1 (mandatory Judicial Council form). On making payment to the court, the clerk must enter satisfaction of the judgment and remit payment to the judgment creditor. CCP §116.860(b).

A judgment debtor's driver's license may be suspended for failing to satisfy a judgment for property damage in excess of \$750 or for personal injury in any amount resulting from the operation of a motor vehicle. CCP §116.870. See Veh C §§16250–16381. A judgment creditor may file a request with the Department of Motor Vehicles for the suspension of the judgment debtor's driver's license if the judgment is for \$750 or less and has remained unsatisfied for more than 90 days. CCP §116.880.

a. [§34.53] Stay of Enforcement

In small claims court, enforcement of judgment is automatically stayed, without the filing of a bond by the defendant, until the time for appeal has expired or, if an appeal is taken, until the appeal is determined. CCP §116.810(a)–(b).

b. [§34.54] Examination of Judgment Debtor

Within 30 days after the clerk mails notice of entry of the judgment, the judgment debtor must deliver to the judgment creditor a completed Judicial Council form SC-133 disclosing the nature and location of his or her assets, unless the judgment has been satisfied. CCP §116.830(a)–(b), (e). See Cal Rules of Ct 201.1 (mandatory Judicial Council form). The clerk must deliver or mail this form to the judgment debtor with the notice of entry of judgment. CCP §116.830(a). If a motion to vacate the judgment or an appeal is filed, the judgment debtor must complete and deliver the form within 30 days after the clerk has mailed notice of denial of the motion to vacate or notice of the entry of judgment on appeal, whichever is applicable. CCP §116.830(c). If the judgment debtor willfully fails to comply with these requirements, the judgment creditor may request the court to apply sanctions, including arrest and attorneys' fees, as provided in CCP §708.170 on contempt of court. CCP §116.830(d). A nonattorney court employee may not conduct debtor examinations in small claims court; examinations must be conducted

either before the judicial officer presiding or a licensed attorney. *Nebel v Sulak* (1999) 73 CA4th 1363, 1369, 87 CR2d 385; CCP §708.140(b). For a discussion of these sanctions, see CALIFORNIA JUDGES BENCHBOOK: CIVIL PROCEEDINGS—AFTER TRIAL §§7.29–7.30 (Cal CJER 1998).

- ➡ JUDICIAL TIP: To reduce the number of orders for examination of a judgment debtor that a court must make, many judges ask the defendant to complete the form in the courtroom immediately after a decision against the defendant has been announced.

c. [§34.55] Challenge to a Postjudgment Enforcement Order

Appeals and writs challenging postjudgment enforcement orders issued by the small claims court are heard in the appellate department of the superior court. *General Elect. Capital Auto Fin. Servs., Inc. v Appellate Div.* (2001) 88 CA4th 136, 144–145, 105 CR2d 552.

H. [§34.56] Appeal

An appeal of a small claims judgment results in a new hearing in the superior court in the county in which the action was heard. CCP §116.710(b). This trial de novo must be held before a judicial officer other than the one who heard the case in the small claims division. CCP §116.770(a). The trial de novo is conducted informally; discovery is not permitted. See CCP §116.770(b). *Bruno v Superior Court* (1990) 219 CA3d 1359, 1363, 269 CR 142. The parties do not have a right to a jury trial, and the court is not required to issue a tentative decision or a statement of decision. CCP §116.770(b); *Crouchman v Superior Court* (1988) 45 C3d 1167, 1173, 248 CR 626. The provisions for conducting hearings in small claims court (CCP §§116.510–116.550) apply to the trial de novo, except that the parties have the right to be represented by an attorney. CCP §§116.530(c), 116.770(c). Under Cal Rules of Ct 157 the court may allow parties or attorneys representing parties to the appeal to conduct direct and cross-examination, subject to the court's discretion to control the manner, mode, and duration of examination in keeping with informality and circumstances.

- ➡ JUDICIAL TIP: At the conclusion of the trial de novo, many judges take the matter under submission and inform the parties that they will receive a judgment from the court by mail. Others prefer to issue a decision from the bench so that they may explain to the parties the reasons for the decision. Most judges believe that it is very important to explain the court's ruling in clear, straightforward, yet thorough, language.

1. [§34.57] Right To Appeal/Scope

The plaintiff has no right to appeal his or her own claim (CCP §116.710(a)), nor may a defendant, who seeks affirmative relief by filing a claim against the plaintiff, appeal from an adverse judgment on that claim (*Davis v Superior Court* (1980) 102 CA3d 164, 162 CR 167). The policy precluding review of small claims judgments against plaintiffs is so strong that a small claims plaintiff cannot obtain appellate review even when he or she can demonstrate that the small claims court clearly erred as a matter of law. *Pitzen v Superior Court* (2004) 120 CA4th 1374, 1379, 16 CR3d 628; *Parada v Small Claims Court* (1977) 70 CA3d 766, 768, 139 CR 87.

However, if the defendant appeals from the plaintiff's claim or the plaintiff appeals from a counterclaim, the scope of the hearing includes the claims of all the parties who were parties to the small claims action, including the claim of a defendant that had been heard in the small claims court. See CCP §116.770(d). There is a split of opinion on the court's authority to make affirmative awards on appeal. In *Township Homes, Inc. v Superior Court* (1994) 22 CA4th 1587, 1592, 27 CR2d 852, the court held that the court hearing the trial de novo has no jurisdiction to make an affirmative award to a defendant who appeals from an adverse judgment on a counterclaim. More recently, two courts have held that if both sides have filed claims and either appeals the other's claim, the superior court must retry both claims, and may enter an affirmative award in favor of a party who was unsuccessful in the small claims court. *Universal City Nissan, Inc. v Superior Court* (1998) 65 CA4th 203, 206–209, 75 CR2d 910 (court hearing the trial de novo has jurisdiction to enter an affirmative award to a *plaintiff* or counterclaimant who was unsuccessful in small claims court); *Linton v Superior Court* (1997) 53 CA4th 1097, 1104, 62 CR2d 202 (affirmative award on cross-claim of small claims court defendant/appellant proper under CCP §116.770(a), (d)).

2. [§34.58] Notice of Appeal

An appeal from a small claims court judgment is taken by filing a notice of appeal with the clerk of that court within 30 days after the clerk has delivered or mailed notice to the parties of entry of judgment. CCP §116.750(a)–(b). See *Cal Rules of Ct 201.1* (mandatory Judicial Council form). The time for filing the notice is not extended by filing a request to correct a mistake in the judgment or by virtue of any subsequent proceeding on that request. CCP §116.750(c). However, if the judgment is modified, a new 30-day period for filing a notice of appeal begins on the date the clerk delivers or mails to the parties notice of entry of the modified judgment. CCP §116.750(c).

A notice of appeal must be signed by the appellant or by appellant's attorney. A notice is sufficient if it states in substance that the appellant

appeals from a specified judgment or, in the case of a defaulting defendant, from the denial of a motion to vacate the judgment. A notice of appeal must be liberally construed in favor of its sufficiency. [Cal Rules of Ct 152\(a\)](#). A notice of appeal filed before entry of the judgment, but after its rendition, is valid and is deemed to have been filed immediately after entry. A notice filed before rendition of the judgment, but after the judge has announced an intended ruling, may, in the discretion of the reviewing court for good cause, be treated as filed immediately after entry of the judgment. [Cal Rules of Ct 152\(c\)](#).

The appellant, but not the respondent, is required to pay a fee of \$75. [CCP §116.760\(a\)–\(b\)](#).

When a notice of appeal is filed, the clerk of the small claims court must promptly mail a notification of the filing of the notice to each other party at the party's last known address. The notification must state the number and title of the action or proceeding and the date the notice of appeal was filed. If a party dies before the court gives notice, the mailing is a sufficient performance of the clerk's duty. The failure of the clerk to give notice of judgment or notification of the filing of notice of appeal does not extend the time for filing notice of appeal or affect the validity of the appeal. [Cal Rules of Ct 152\(b\)](#). On filing of the notice of appeal and the payment of any fees required by law, the clerk of the small claims court must within five days transmit the file and all related papers, including the notice of appeal, to the clerk of the court assigned to hear the appeal. [Cal Rules of Ct 153](#).

3. [§34.59] Dismissal of Appeal by Superior Court

At any time before the file has been transmitted to the court assigned to hear the appeal, the appellant may file in the office of the clerk of the small claims court a written abandonment of the appeal, or the parties may file in that office a stipulation for abandonment. The filing of either document operates to dismiss the appeal and to return the case to the small claims court. [Cal Rules of Ct 155\(a\)](#).

After the file has been transmitted to the court assigned to hear the appeal, the appeal may be dismissed by that court on written request of the appellant or stipulation of the parties filed with the clerk of the court assigned to hear the appeal. [Cal Rules of Ct 155\(b\)](#). The appeal must be dismissed if not brought to trial within one year from the date of filing the appeal. If a new trial is ordered, the appeal in the case must be dismissed if the case is not brought to trial within one year from the date of entry of the order for the new trial. However, dismissal must not be ordered or judgment entered if there was in effect a written stipulation extending the time for the trial or if the appellant shows that he or she exercised reasonable diligence to bring the case to trial. In any event the appeal must

be dismissed if the case is not brought to trial within three years after either the appeal is filed or the most recent new trial order is entered in the court assigned to hear the appeal. [Cal Rules of Ct 155\(c\)](#); see [CCP §116.795\(a\)](#).

When an appellant files an abandonment of appeal, the clerk of the court in which the abandonment is filed must immediately notify the adverse party or parties of the filing. The clerk of the court assigned to hear the appeal must immediately notify the parties of any order of dismissal or of any judgment for defendant made by the court under Rule 155(c). [Cal Rules of Ct 155\(d\)](#). On dismissal of an appeal, the clerk of the court assigned to hear the appeal must transmit to the small claims court a copy of the order of dismissal and all original papers and exhibits transmitted to the court assigned to hear the appeal. [Cal Rules of Ct 155\(e\)](#). The small claims court will then proceed with the case as if no appeal had been taken. [CCP §116.795\(b\)](#); [Cal Rules of Ct 155\(e\)](#). Although it may dismiss the appeal, the superior court lacks jurisdiction to dismiss the small claims action itself. Its power of dismissal extends only to the appeal, not to dismissal of the entire action. See *Acuna v Gunderson Chevrolet, Inc.* (1993) 19 CA4th 1467, 1473–1474, 24 CR2d 62.

It is a violation of an appellant's due process rights to sua sponte dismiss an appeal at a readiness conference without prior notification. The superior court should properly notice the dismissal matter, for example, to hear arguments whether a nonappearing defendant spouse had a right to appeal. *Bricker v Superior Court* (2005) 133 CA4th 634, 639, 35 CR3d 7.

4. [§34.60] Finality of Judgment

The judgment of the superior court is final and nonappealable. [CCP §116.780\(a\)](#). A judge may not grant relief under [CCP §473\(b\)](#) from the judgment (*Era-Trotter Girouard Assoc. v Superior Court* (1996) 50 CA4th 1851, 1853, 1857, 58 CR2d 381), nor may a party file a motion for a new trial under [CCP §659](#) or a motion to vacate the judgment under [CCP §663](#). *Eloby v Superior Court* (1978) 78 CA3d 972, 975–976, 114 CR 597. However, a superior court may grant a rehearing under [Cal Rules of Ct 107](#). See *Adamson v Superior Court* (1980) 113 CA3d 505, 509, 169 CR 866.

Appellate review may be obtained by extraordinary writ to secure uniformity in the operations of small claims courts and in the interpretation of the statutes governing them. See *Township Homes, Inc. v Superior Court* (1994) 22 CA4th 1587, 1590 n2, 27 CR2d 852; *Davis v Superior Court* (1980) 102 CA3d 164, 168, 162 CR 167. However, an appellate court will not entertain a writ petition merely to consider a claim that the superior court judge erred. *Linton v Superior Court* (1997) 53 CA4th 1097, 1099 n2, 62 CR2d 202; see *Pitzen v Superior Court* (2004)

120 CA4th 1374, 1379, 16 CR3d 628. The provisions of CCP §§116.610–116.630 concerning judgments in a small claims court apply to judgments of the superior court on appeal. CCP §116.780(b).

5. [§34.61] Award of Attorneys' Fees and Costs

For good cause, the court may award reimbursement of attorneys' fees incurred in connection with the appeal of up to \$150, and actual loss of earnings and other expenses incurred in connection with the appeal of up to \$150. CCP §116.780(c). If the court finds that the appeal was without substantial merit and not based on good faith, it may award the other party attorneys' fees incurred in connection with the appeal of up to \$1000, and any actual loss of earnings and other expenses incurred in connection with the appeal of up to \$1000. CCP §116.790.

☛ JUDICIAL TIP: A motion is not required to invoke the court's authority to award attorneys' fees and costs. The court may initiate a hearing on its own motion immediately after the trial and rendition of judgment.

6. [§34.62] Enforcement of Judgment on Appeal

The judgment of a superior court after a hearing on appeal may be enforced as provided in CCP §§680.010–724.260. CCP §116.820(a).

Only the superior court has jurisdiction to entertain a motion to amend the judgment, *e.g.*, to add additional judgment debtors under CCP §187. See *Issa v Alzammar* (1995) 38 CA4th Supp 1, 4–5, 44 CR2d 617 (either judge presiding at trial de novo or another judge of the superior court should hear the motion).

The prevailing party on appeal is entitled to the costs of enforcing the judgment and accrued interest. CCP §116.820(c).

IV. FORMS

A. [§34.63] Spoken Form: Introductory Statement Before the Hearing

In small claims court we try to keep the hearings simple. We do not use attorneys, but there are certain guidelines that must be followed to make sure that your case is decided fairly. In most cases the plaintiff has the burden of proof, which means that the plaintiff must convince the court that money is owing. Generally, this is what will happen:

When I call your name, please come forward. If you are the plaintiff, that is, the person who first filed the claim, take the seat on your [left/right]. If you are the defendant, take the seat on your [right/left].

If you have any papers, pictures, or other things that you think support your claim, please label them “plaintiff” or “defendant,” if you have not already done so, and give them to me when it is your turn. Anything you show me you must also show to the other side. Please do not talk while the other party is looking at your things. I will return all things to you after I have made my decision.

To begin the hearing on your case, I will first hear from the plaintiff. Then I will hear from the defendant. When you are explaining your side, try to be brief, but be sure to tell me all the facts that you think are important to the case. If you are nervous, you can write down what you want to say and hand it to me.

It is important that you do not interrupt anybody else while they are speaking. If you disagree with something that is being said, wait until that person has finished speaking. Then raise your hand so that I can call on you.

After I have heard both sides and all the evidence in your case, I will make a decision. If I think I need more time to consider it or if the matter requires further investigation, I will take your case under submission, and send you my decision in the mail.

B. [§34.64] Spoken Form: Announcement of Judgment From the Bench

Judgment is for the [plaintiff/defendant] in the amount of \$_____ [plus interest in the amount of \$_____], plus court costs in the amount of \$_____.

The main reason for my decision is [state the general legal principles or social policy on which the decision is based].

[Optional: Installment payments]

This judgment is to be paid in monthly payments of \$_____, which are due on the _____ of each month beginning [date]. If any payment is not paid within ten days of the date it is due, the entire judgment becomes due and payable.

C. [§34.65] Spoken Form: Taking Case Under Submission

I have heard all the evidence. I think the matter requires further consideration so I will take the case under submission and send you my decision. Until you receive my decision, it is important that you do not contact the court or try to give me any new information because it would be unfair to the other party for me to hear evidence without giving the

other party a chance to respond. You will receive my decision by mail in approximately [*length of time*].

D. [§34.66] Spoken Form: Default Judgment

I find that the plaintiff has proved [*his/her*] case. I will give to the plaintiff judgment in the amount of [*amount not exceeding that requested in the claim*] plus [*interest and*] court costs in the amount of \$_____.

E. [§34.67] Written Form: Small Claims Court Worksheet

The following worksheet is designed to be used on the bench. It can be duplicated or modified to suit the needs of the particular court.

SMALL CLAIMS COURT WORKSHEET

Case Name: _____ Case No. _____

Date: _____

☐ Stipulation to temporary judge

☐ Parties

☐ Plaintiff Present

☐ Problems (e.g., standing; is plaintiff an assignee?)

☐ Relationship to business or other entity

☐ Defendant present

☐ Problems (e.g., have all necessary parties been named?)

☐ Relationship to business or other entity

☐ Is plaintiff willing to dismiss improper parties and proceed?

☐ Fictitious name statement

☐ Representative declaration

☐ Corporation

☐ Sole proprietorship

☐ Military

☐ Nonresident property owner

☐ Prisoner

☐ Other _____

☐ Settlement

☐ Dismissal

☐ Stipulated judgment

☐ Service

☐ Proper

☐ Improper

☐ Waived

☐ Continued

☐ Dismissed

☐ Venue

☐ Jurisdiction

☐ Declaration re claim over \$2500

☐ Plaintiff a local public entity

Specify _____

☐ Statute of limitations

☐ Statute of frauds

☐ Plaintiff's case:

☐ Defendant's case:

☐ Rebuttal:

☐ Judgment

☐ Default?

☐ Payment of lump sum \$ _____ to _____

☐ Separate judgments for:

☐ Cross-claims

☐ Multiple defendants

☐ Joint/several liability

☐ Installment payments

Total amount \$ _____

Installment amount \$ _____

Due date _____

Date of commencement _____

Grace period _____

Effect of failure to pay:

☐ Equitable relief:

☐ Conditional judgment

☐ Detailed description of performance:

☐ Mechanism for notification of noncompliance:

☐ Court date for completion of compliance _____

☐ Costs \$ _____

☐ Return exhibits

V. [§34.68] ADDITIONAL REFERENCES

CALIFORNIA JUDGES BENCHBOOK: CIVIL PROCEEDINGS—BEFORE TRIAL (Cal CJER 1995).

CALIFORNIA JUDGES BENCHBOOK: CIVIL PROCEEDINGS—TRIAL (Cal CJER 1997).

CALIFORNIA JUDGES BENCHBOOK: CIVIL PROCEEDINGS—AFTER TRIAL (Cal CJER 1998).

California Tenants: Your Rights and Responsibilities (Department of Consumer Affairs 1992).

Carnahan, Douglas, A Business Guide to California Small Claims Court Law and Procedure (Parker & Sons Publications 1992).

Collecting Your Small Claims Judgment (Department of Consumer Affairs 1989).

Consumer Law Sourcebook for Small Claims Court Judicial Officers (Department of Consumer Affairs 1995).

How To Be a (Better) Small Claims Judge (Department of Consumer Affairs 1995).

Manual of Small Claims Procedures (California Court Clerks Association 1992).

Using the Small Claims Court: A Handbook for Plaintiffs and Defendants (Department of Consumer Affairs, 2000)

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